# United States District Court



Printed name and title

	for the				
Eastern District of California		AUG 0 9 2018			
United States of America v.	)		CLERK, U.S EASTERN DIST BY	DISTRICT COUP	
EARL JOHN VELASQUEZ	)	Case No. 5:18-mj-000	057-JLT	PUTY CLERN	
Defendant(s)	)				
CRIM	MINAL CO	MPLAINT			
I, the complainant in this case, state that	the following is	s true to the best of my kr	nowledge and beli	ef.	
On or about the date(s) of January 1, 2018	to present	in the county of	Kern	in the	
Eastern District of California	, the def	fendant(s) violated:			
Code Section		Offense Description			
18 U.S.C. 2261A(2) Cybersta	alking				
		,			
This criminal complaint is based on these	facts:				
See affidavit attached hereto and incorporated he					
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Tontinued on the attached sheet.				, ,	
		37	Ty	· 	
		•	ainant's signature		
			mpson, FBI Speci ed name and title	al Agent	
Sworn to before me and signed in my presence.					
Date: 8 9 1 8		Junifu	1 Tuu dge's signature	Ñ_	
City and state: Bakersfield, CA		Jennifer L. Thurs	ton, U.S. Magistra	ate Judge	

City and state:

#### AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Shayne K. Thompson, being duly sworn, do hereby state:

## I. PURPOSE OF AFFIDAVIT

- 1. This affidavit is intended to establish probable cause in support of a criminal complaint and arrest warrant for Earl John VELASQUEZ, charging a violation of Title 18, United States Code, Section 2261A (2), Stalking.
- 2. I am familiar with the facts and circumstances described herein and make this affidavit based upon personal knowledge derived from my participation in this investigation. Conclusions I have reached are based on training, experience, my discussions with other federal, state and local law enforcement officers, and upon information I believe to be reliable from the following sources:
  - a) Oral and written reports about this and other investigations, which I have received from federal agents and local law enforcement officers;
  - b) Physical surveillance conducted by federal agents and local law enforcement officers;
    - c) Law enforcement databases, public databases and other records;
    - d) Interviews; and
    - e) Review of social media accounts.

#### II. AGENT'S BACKGROUND

- 3. I am a Special Agent (SA) employed by the Federal Bureau of Investigation (FBI) and have been so employed since August 2016. As an FBI Special Agent, I am authorized to investigate and make arrests for any offense against the United States. I am currently assigned to the FBI's Joint Terrorism Task Force (JTTF), Bakersfield Resident Agency, at Bakersfield, California. I completed 21 weeks of new agent training at the FBI Academy in Quantico, Virginia. During my training at the FBI Academy, I received thorough instruction on assessments and investigations, investigative technology, threat analysis, critical thinking, and counterterrorism.
- 4. As part of my responsibilities as a Special Agent assigned to the JTTF, I have worked on multiple investigations involving reports of individuals using social media to communicate threats. In connection with these investigations, I have conducted numerous interviews with subjects, victims and

witnesses to assess the validity of the threat and/or crime. I have also assisted members of the Criminal and Counterintelligence Division within our regional agency on tasks such as interviews, search warrants, arrests, seizures, surveillance, evidence collection and information collection.

- 5. Based upon my training and experience, I know that social media is a common way for individuals to communicate with one another. I also know, from this and other investigations, that use of social media to commit criminal violations, such as stalking, threatening communications, and other acts, is becoming more common. I know that social media platforms are a common form of communication. Commonly used social media platforms include Facebook, Twitter, and Instagram. From my review of publicly available information, I know the following:
  - a) Facebook is a social networking website used to promote communication between friends, family and colleges. To create an account, one registers with Facebook. During the registration process or thereafter, Facebook asks users to provide basic contact and personal identifying information. This may include the user's full name, date of birth, gender, contact email address, security questions and answers, physical address, telephone numbers, screen names, websites, and other personal identifiers. Individuals connected to one another through Facebook are referred to as "Friends." "Friends" can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which includes posts by the user and the user's "Friends", and highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays. Facebook users can select different levels of privacy for communications and information associated with his/her Facebook account. By adjusting these privacy settings, a Facebook user can make information available only to himself/herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users.
  - b) Instagram is a free-access social networking website that allows users to create their own profile pages, which can include a short biography, a photo, and other information.

    Upon creating an Instagram account, an Instagram user must create a unique Instagram username and an account password. Instagram asks users to provide basic identity and contact information upon registration and allows users to provide additional identity information for their user

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profile. Once an account is created, users may adjust various privacy and account settings associated with the user's account. Instagram allows users to have "friends," which are other individuals with whom the user can share information without making the information public. Instagram also allows users to "follow" another user, which means that the user will receive updates about posts made by the other user." Instagram is centered on the sharing of photos and short videos. When posting or sharing a photo and/or video on Instagram, a user can add to the photo a caption, various "tags" for search purposes, location information, and other information. Users can make comments on their own posted photos and videos, as well as those of other users. Users can also "like" photos and videos.

c) Twitter owns and operates a free-access social networking website of the same name that can be accessed at http://www.twitter.com. Twitter asks users to provide basic identity and contact information, either during the registration process or thereafter. The information may include the user's full name, e-mail address, physical address, date of birth, gender, hometown, occupation, and other personal identifiers. Twitter allows its users to create their own profile pages, which can include a short biography, a photo of themselves, and location information. Twitter also permits users to create and read 140-character messages called "Tweets," and to restrict their "Tweets" to individuals to whom they approve. Each "Tweet" includes a timestamp that displays when the "Tweet" was posted to Twitter. Twitter users can "favorite," "retweet," or reply to the Tweets of other users. Twitter users can include photographs or images in their Tweets. Users are able to set their privacy setting under two categories: public or protected. A public setting means the user's "Tweets" can be viewed by anyone; whether or not they have a Twitter account. A protected account means the user's "Tweets" are only viewable by the members who follow the user. Twitter users can also send direct messages to one of his or her followers. These messages are typically visible only to the sender and the recipient, and both the sender and the recipient have the power to delete the message from the inboxes of both users.

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#### III. PROBABLE CAUSE

6. **Summary of Probable Cause.** VELASQUEZ is using various social media accounts to communicate with T.D. The content of these messages, as described below, are threatening and harassing. T.D. removed VELASQUEZ as a "friend," and he began contacting T.D. using other accounts.

#### A. Applicable Law

- 7. Title 18, United States Code, Section 2261A prohibits cyberstalking. Under subsection (2), the crime of cyberstalking requires proof that a defendant, "with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that (A) places that person in reasonable fear of death or serious bodily injury to" (i) that person, (ii) an immediate family member of that person; or (iii) a spouse or intimate partner of that person; "or (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress" to any class of person previously described.
- 8. "Course of conduct" is defined in 18 U.S.C. § 2266(2) as "a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose."

#### B. Means Used

- 9. This case involves the use of various social media accounts Facebook, Instagram and Twitter to which content was posted and through which messages were sent. As more fully explained herein, VELASQUEZ used cellular telephones to access social media accounts from which he sent/received and posted content relevant to this investigation. During an interview of VELASQUEZ in April 2018, he identified the following social media accounts as his personal accounts:
  - a) Facebook:
- earlsmokesdank
  - b) Instagram:
- i on3 sh0t ho3s
- c) Twitter:
- EarlJohnvelasq2
- 10. Through use of other investigative methods, your affiant believes that VELASQUEZ also has access to and uses Facebook account "earlene.christian.9" and "Paul Sanchez", as more fully

described below.

- 11. Social media websites, such as Facebook, Instagram, and Twitter, can be accessed on electronic devices that allow the user to access the internet. Some devices that allow access to the internet are cellular telephones, personal electronic tablets, computers, smart televisions, and some video game consoles. These social media websites often will have applications available for download to allow the user to access the social media website through the associated application opposed to using an internet browser.
- 12. VELASQUEZ told agents that he used at least two (2) cellular telephones to access his social media accounts.

#### C. Initial Contacts between VELASQUEZ and Victim, T.D.

- 13. Fort Walton Beach Police Department (FWBPD) interviewed T.D. due to a series of communications she received through social media from VELASQUEZ and an older woman whom T.D. believed may be VELASQUEZ's mother. Below is a list of the social media communications received that led to being contacted by FWBPD:
  - a) VELASQUEZ and T.D. had become "friends" on Facebook back in 2017. On January 1, 2018, VELASQUEZ sent a private Facebook message to T.D. saying, "Idk you but happy new years" in which T.D. responded, "You too pal".
  - b) On January 27, 2018, VELASQUEZ sent a private Facebook message to T.D. that said, "yo" but T.D. did not respond.
  - c) On March 1, 2018, a direct message was sent from the Facebook account of earlene.christian.9 to T.D. that said, "You better hope my son doesn't get any new charges he got picked up by the FBI" but T.D. did not respond.
  - d) On March 5, 2018, a direct message was sent from VELASQUEZ's Facebook account to T.D. that said, "I know you don't like people messaging you and you can delete me for this I don't care I just wanted to apologize to you for being an idiot and you seem like a cool person well anyway I'm sorry" but T.D. did not respond.
  - e) On March 7, 2018, a direct message was sent from VELASQUEZ's Facebook account to T.D. of a smiley face with heart shaped eyes. T.D. did not respond to the message.

# D. <u>Initial Report Concerning Twitter Posts</u>

- 14. On March 17, 2017, a resident of Minnesota contacted the Fort Walton Police

  Department to report a potential threat of violence towards a tattoo parlor in Fort Walton Beach, Florida.

  The reporter saw a public Twitter post to which "EarlJohnvelasq2" commented. VELASQUEZ wrote,

  "You bring up a good point seeing as I'm planning to shoot up a tattoo parlor in fort Walton and I won't be using an ar15 either I'm going to use the guns pictured below to do it why I'm telling you this I don't know but #itwillhappenagain".
- 15. Your affiant later viewed this Twitter account, and saw the following public posts from February 28, 2018:
  - a) "I don't care if the feds kick my door in lol it's not like there watching this right now #fuckflordia #itwillhappenagain besides I got plans on visiting Florida going to settle a old grudge with somebody I might kill them";
  - b) "I'm thinking becoming a contract killer I've already been offered money to kill somebody I might actually do it lol it involves a trip to Florida I can settle my grudge and then kill this other person #fuckflorida #imcoming for you"; and
  - c) "Step1 travel to Florida step 2 buy a ak47 step 3 settle my grudge step 4 #itsnotahatecrimeifpeoplearent innocent #street justice".
- 16. On March 19, 2018, an officer from the FWBPD began contacting tattoo parlors to determine whether any employees knew VELASQUEZ or had received threats from VELASQUEZ. The officer learned that T.D. was employed by two tattoos parlors in the Fort Walton Beach area.
- 17. Upon initially receiving the Facebook Messenger messages and being advised of other posts made by VELASQUEZ, T.D. was concerned for her safety. However, T.D. was ultimately told by a FWBPD Officer that she should not worry because VELASQUEZ did not pose a real threat. T.D. continued to feel "shitty" due to not understanding "why they would want to target" her.

# E. Continuing Contacts by VELASQUEZ

18. On March 1, 2018, a direct message to a Facebook friend was made from earlene.christian.9's Facebook page that stated, "Hey it's Earl I'm on my mom's account I got reported".

On March 1, 2018, another direct message to a Facebook friend from earlene.christian.9's Facebook

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27 28 page stated, "Hey it's Earl my account got reported so I'm on my mom's could you still help with that ride?"

- 19. On March 11, 2018, T.D. removed VELASQUEZ (earlsmokesdank) as a friend on Facebook. On the same day, several searches for T.D. were made from earlsmokesdank and earlene.christian.9's Facebook page. A friend request was sent from earlene.christian.9's Facebook page to T.D. but was subsequently rejected by T.D. The Facebook account of earlene christian. 9 was used to send a picture to T.D. of a shotgun and with the caption, "You ever seen this gun".
- On March 11, 2018, the Facebook page with vanity name "Paul Sanchez" was created. It 20. is your affiant's belief, based upon a review of Facebook records, that VELASQUEZ created the "Paul Sanchez" account. The "Paul Sanchez" account was created using a telephone number that VELASQUEZ admitted, during an interview on April 5, 2018, was his mother's cellular number. The records also confirm that the Facebook page "Paul Sanchez" has the same registration IP address as earlene.christian.9's Facebook page.
- On March 11, 2018, "Paul Sanchez" conducted a search for T.D., sent a friend request to 21. T.D., and sent a private message to T.D. saying, "It's not over yet I know were you live now thanks to this new technology and I even know more than that I told you didn't I'm one of those people who does shit like this for fun why because I can and I know you don't enough about me to prove anything lol good luck on getting the FBI to investigate I even out smart them but anyway just remember I got eyes on you".
- On March 13, 2018, T.D. received a direct message from the Facebook account of 22. earlene.christian.9 that displayed a picture of two AK-47s.
- On March 16, 2018, T.D. received a direct message from the Facebook account of 23. earlene.christian.9 that said, "Hey I saw what my son sent you here's my number 6614933015 maybe you can talk some sense into him he's been disrespectful lately and he won't stop talking about killing you till you put him in his place."
- On April 30, 2018, T.D. reported that T.D.'s friend who lived in Tennessee, posted a 24. picture of T.D. on the friend's Instagram account. The friend subsequently notified T.D. that VELASQUEZ's Instagram account left a comment on the friend's Instagram post that read, "Im going

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to kill that girl one day".

- 25. On May 25, 2018, a direct message was sent to T.D. from the Facebook account of earlene.christian.9 that said, "Your going to die soon I'm going to say".
- 26. On May 27, 2018, a comment was made by i\_on3\_sh0t\_ho3s's Instagram account that said, "Is there any particular reason other than someones insecurity as to why a tattoo shop that i will never get a tat from is following me? . I bet she told you an exaggerated story and also I got in lot of trouble for posting pictures of my guns. Also I don't post my plans for other people anymore I write them down 6614933015 @defiance\_tattoo\_co please unfollow or black me you wont find out my plans and tell tailor to shut her mouth and ill leave her alone. Or even better call this number I know you wont because your to much of a pussy to do it.6614933015".

# IV. <u>CONCLUSION</u>

27. Based on the foregoing, I submit there is probable cause to believe that VELASQUEZ is in violation of 18 U.S.C. § 2261A(2)(B) as a result of his social media posts and messages sent through these platforms which he accessed through cellular telephones, and I request the issuance of an arrest warrant.

Dated:

SHAYNE K. THOMPSON FBI Special Agent

SWORN TO BEFORE ME, AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_\_\_ DAY OF AUGUST, 2018.

HONORABLE JENNIFER L. THURSTON Upited States Magistrate Judge

Approved as to form and content:

/s/Melanie L. Alsworth
MELANIE L. ALSWORTH
Assistant United States Attorney